



## Housatonic Valley Association

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February 2, 2010



Mr. Paul Stacey, Hearing Officer  
Director, Bureau of Water Protection and Land Reuse  
Planning and Standards Division  
Connecticut Department of Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

BUREAU OF WATER PROTECTION AND LAND REUSE  
PLANNING & STANDARDS DIVISION

FEB 03 2010

Dear Mr. Stacey,

The Housatonic Valley Association (HVA) is a regional non-profit watershed conservation organization working since 1941 to conserve the natural character and environmental health of the entire tri-state, 1,948 square-mile watershed of the Housatonic River. We appreciate this opportunity to provide you with additional comments on the **Draft Stream Flow Standards and Regulations**.

- 1) The regulations need to move forward.

We strongly support the implementation of new regulations. Without these regulations, we have no way of ensuring that Connecticut's rivers and streams will continue to provide enough water for our communities, our economy *and* our environment. These regulations assign, for the first time, *equal weight* to the ecological needs of rivers and streams when considering all of society's water-based needs.

So far, Connecticut has experienced decades of failure to reform statewide water planning and management policy, despite a number of energetic and well intentioned efforts over the many years. As we noted during the public hearing on January 21, 2010, the need to fix the state's piecemeal and uncoordinated approach to water management is not controversial, nor is it new. Yet in spite of years of work, every effort to establish a thoughtful and comprehensive water management process in Connecticut has failed.

*This failure cannot continue to be the underlying rationale for lack of basic stream flow protection in Connecticut.* We agree with other stakeholders across the spectrum that we must keep working to achieve integrated statewide water management and resolve infrastructure, rate and other important issues. *These regulations cannot be expected to solve our continuing allocation and long-standing water management problems. They can – and do – offer basic protection to our rivers and streams while we work toward an overall statewide water management program. These regulations are our first measurable step toward a sustainable water future in Connecticut.*

- 2) We support the overall approach and framework of the regulations.

As required by Public Act 05-142, the regulations: apply to all rivers and streams by applying to all structures (dams, groundwater and direct withdrawals, etc) that affect these waterways; strive to preserve and protect natural and stocked aquatic and wildlife, and public recreation, which are all dependent on water flow; are based on the natural variation of flow and on the best available science; and provide for appropriate exemptions. The regulations are largely responsive to stakeholder input. They are flexible in recognizing that all rivers are not the same and deserve different management objectives. They are designed to place human needs first in times of drought and other emergencies. They respect existing state and federal permits and flow management agreements.

The regulations create the platform that we need to build a financially *and* ecologically sustainable water supply system. They provide ample time for implementation, and they provide for creative, site specific alternative ways of meeting the standards through flow compacts.

- 3) We support the comments submitted by the Rivers Alliance of Connecticut (RA) and by The Nature Conservancy (TNC).

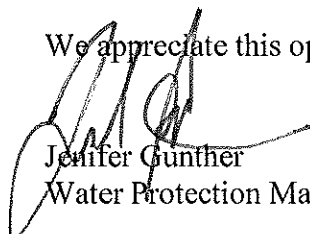
We offer the following additional comments:


- a) We support the intent of the regulations to apply to registered diversions. Further, while it may be intuitive that once a diversion permit expires, the holder must come into compliance with these regulations in seeking a permit renewal, we recommend that the regulations clearly state this requirement and specify a time frame for doing so.
- b) Sec. 26-141b-3(b): We are concerned that the regulations do not give DEP any authority in the years prior to classification, and in the interim years following classification. We are also concerned that the currently unregulated, unstocked streams will, once the regulations are adopted, be ineligible for protection under the Connecticut Environmental Protection Act. DEP should amend this section to reserve its ability to require water releases in the event of unreasonable impairment to a river or stream, stocked or not.
- c) Sec. 26-141b-4 and 5: We concur with TNC's assertion that the entire regulatory framework should be promulgated rather than separating the stream classification sections from the standards and implementation sections. As we understand the proposed approach, classification cannot logically occur without an understanding of existing conditions, which in turn leads to specific levels of protection. Further, it is impractical and perhaps not even feasible or justifiable for DEP staff to work on a classification system for which there is no regulation.
- d) Sec. 26-141b-4(a): We remain concerned that there is no overall goal within the regulations to improve the flow of our rivers and streams over time. Classes 2, 3 and 4 should have a stated goal for improvement.

- e) Sec. 26-141b-4(d): We concur with RA that Class 4 should either be eliminated or alternately, that Class 4 should include an environmental protection standard and a goal of improving flow to at least Class 3 conditions.
- f) Sec. 26-141b-5(c): Is this intended to apply *at any time* after adoption of the classification system? If so, then we recommend clearly stating this within the first paragraph. If not, then see our comment j) below.
- g) Sec. 26-141b-5(c)(1)(A): We are concerned that achieving *improved* stream flow and a less altered classification will be difficult if not impossible. We recommend adding "(iii) it is likely that a new water management scenario (or Water Management Compact) will be proposed that can achieve the less altered classification."
- h) Sec. 26-141b-6(a): We concur with TNC's request that a section be added to clarify that the Commissioner should consider the ability of the water supply system to maintain an adequate margin of safety. We support more flexibility for water suppliers by including a variance process that expands the timeframe for compliance.
- i) Sec. 26-141-6(b)(2): We strongly support TNC's recommendation to consider allowing the submission of a "site specific flow plan" for the reasons TNC states.
- j) Sec. 26-141b-6(c)(1): It appears that petitions for variances to increase minimum releases or decrease maximum alteration are not allowed. We recommend amending this section to allow variances requests in both directions. We also urge the addition of (C) "Members of the public within the affected watershed." The public should be allowed to petition for a variance. The right to petition, in either direction, should not be limited only to the governor, state agencies and owner/operators.
- k) Sec. 26-141b-7: We strongly support the concept of Flow Management Compacts as an alternative way of meeting the narrative standards. Again, we support TNC's recommendation for site specific flow plans, and a DEP evaluation and correction of any unreasonable barriers to entering a compact. We also recommend that this section be amended to include a public appeal process.

Finally, we urge the improvement and adoption of stream flow protection regulations. We are committed to working with all stakeholders to improve Connecticut's overarching water management policy; however our streams should not remain hostage to that process.

We appreciate this opportunity to comment.

  
Jennifer Gunther  
Water Protection Manager

  
Lynn Werner  
Executive Director

